

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

JAMES D. SUDBERRY,

Plaintiff

v.

C-1-10-630

TERRY COLLINS, *et al.*,

Defendants

ORDER

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 6), plaintiff's objections (doc. no. 8) and plaintiff's Emergency Motion (doc. no. 9) which the Court will consider as additional arguments in support of plaintiff's objections. The Magistrate Judge concluded that because the serious physical harm about which plaintiff complains occurred in May, 2010 and plaintiff did not file

his Complaint until September, 2010, plaintiff's allegation of past physical harm does not meet the exception to the three strike bar. The Magistrate Judge therefore recommended that plaintiff's Motion for Reconsideration (doc. no. 5) be DENIED; this case should be DISMISSED for plaintiff's failure to pay the Court's \$350.00 filing fee as ordered by the Court; and plaintiff should be assessed the full filing fee of \$350.00.

Plaintiff objects to the Judge's Report and Recommendation on the grounds that his findings are contrary to law.

#### CONCLUSION

Upon a *de novo* review of the record, especially in light of plaintiff's objections (doc. nos. 8 and 9), the Court finds that plaintiff's objections have either been adequately addressed and properly disposed of by the Judge or present no particularized

arguments that warrant specific responses by this Court. The Court finds that the Magistrate Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Judge.

Accordingly, the Court hereby ADOPTS the Report and Recommendation of the United States Magistrate Judge (doc. no. 6). Plaintiff's Motion for Reconsideration (doc. no. 5) is DENIED; this case is DISMISSED for plaintiff's failure to pay the Court's \$350.00 filing fee as ordered by the Court.

This Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order would not be taken in good faith. *See, McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997). The Court therefore DENIES plaintiff leave to proceed *in forma pauperis* in the United States Court of Appeals for the Sixth Circuit.

The Clerk of Courts is DIRECTED to mail to plaintiff and the prison cashier's office at which plaintiff is incarcerated a copy of the Court's Order adopting the Report and Recommendation of the United States Magistrate Judge and the attached instructions which are incorporated in this Order.

The case is DISMISSED AND TERMINATED on the docket of this Court.

IT IS SO ORDERED.

s/Herman J. Weber  
Herman J. Weber, Senior Judge  
United States District Court